

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CYWEE GROUP LTD.,

Plaintiff,

v.

GOOGLE, LLC.,

Defendant.

CASE NO. 18-cv-00571-RGA

JURY TRIAL DEMANDED

JOINT STATUS REPORT

Pursuant to the Court’s January 4, 2019 Order (D.I. 39), Plaintiff CyWee Group Ltd. (“CyWee”) and Defendant Google LLC. (“Google”) respectfully submit the following Joint Status Report.

In its complaint in this case, CyWee asserted that Google infringes claim 14 of U.S. Patent No. 8,441,438 (“the ’438 Patent”) and claim 10 of U.S. Patent No. 8,552,978 (“the ’978 Patent”) in addition to one or more additional claims of both patents.¹ Google filed petitions for *inter partes* review (“IPR”) challenging certain claims in both patents. Subsequently, ZTE filed an IPR petition challenging certain claims of the ’438 Patent. As described below, the Google IPRs and all appeals have been resolved, cancelling all challenged claims in those IPRs including claim 10 of the ’978 Patent. The ZTE IPR resulted in cancellation of all

¹ This case was stayed before service of infringement contentions identifying the asserted claims.

challenged claims, including claim 14 of the '438 Patent. That decision remains pending on appeal.

The Google IPRs:

On January 9, 2020, the PTAB held all challenged claims invalid in the two IPR proceedings filed by Google (the “Google IPRs”):

Asserted Patent	IPR Case No.	Original Claims Held Invalid	Proposed Contingent Amended Claims Held Invalid
8,441,438	IPR2018-01258	1, 3–5	20, 21
8,552,978	IPR2018-01257	10, 12	19, 20

CyWee appealed the PTAB’s final written decisions in the Google IPRs. The Federal Circuit Court of Appeals affirmed those decisions. On April 4, 2021, CyWee filed petitions for *en banc* review. The Federal Circuit denied those petitions on June 3, 2021. Mandates issued on June 10, 2021.

The ZTE IPR:

On February 17, 2021, the PTAB held all challenged claims invalid in an inter partes review proceeding filed by ZTE (the “ZTE IPR”):

Asserted Patent	IPR Case No.	Original Claims Held Invalid	Proposed Contingent Amended Claims Held Invalid
8,441,438	IPR2019-00143	1, 4, 5, 14–17, 19	20-24

CyWee appealed the PTAB’s final written decision in the ZTE IPR on April

8, 2021. On June 30, 2021, CyWee filed a motion requesting that the Federal Circuit dismiss its appeal of the ZTE IPR and remand the matter to the USPTO for further proceedings in light of the Supreme Court's recent decision in *United States v. Arthrex, Inc.*, No. 19-1434, 2021 WL 2519433 (June 21, 2021) holding that "the unreviewable authority wielded by APJs during inter partes review is incompatible with their appointment by the Secretary to an inferior office." On July 14, 2021, the Federal Circuit issued an order (1) certifying CyWee's constitutional challenge to the Attorney General, (2) directing the Attorney General to inform the Court within 30 days whether the United States intends to intervene and if so to file any response to CyWee's motion to remand, (3) ordering appellee to file any response within that 30-day timeframe, and (4) staying the briefing schedule in the appeal.

Because the outcome of the ZTE IPR may affect the status of original claims 14-17, and 19, and proposed contingent amended claims 20-24 of the '438 Patent, neither party requests lifting the stay at this time.

Dated: July 28, 2021

Respectfully submitted,

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